

(1985) 05 DEL CK 0060

In the Delhi High Court

Case No : Criminal Writ Appeal No. 76 of 1985

Ravi Sharma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 31-05-1985

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)

Citation : (1985) 28 DLT 171 : (1986) 1 ILR Delhi 647 : (1985) 2 RCR(Criminal) 352

Hon'ble Judges : N.N. Goswamy, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : Harjinder Singh, B.P. Singh, M.C. Sekharan and P.S. Sharma, for the Appellant;

Judgement

Charanjit Talwar, J.

(1) The petitioner herein, Ravi Sharma, seeks quashing of the order of detention dated 14th January, 1985, passed by Shri K. K. Dwivedi, Joint Secretary to the Government of India, Ministry of Finance, Department of Revenue, u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (herein called "the Act") with a view to preventing him from smuggling goods or abetting smuggling of goods. He has also challenged the legality of the order made on 12th February, 1985, u/s 9(1) of the Act by the Additional Secretary to the Government of India declaring that the detenu is likely to abet the smuggling of goods into and out of and through Delhi airport which is an area highly vulnerable to smuggling.

(2) The petitioner was in fact detained on 17th November, 1984, vide order of the same date passed by Shri K.K. Dwivedi who is specially empowered u/s 3(1) of the Act by the Central Government to pass an order of detention u/s 3 of the Act. This order was revoked on 14th January, 1985, by the Government of India u/s 11(1)(b) of the Act A copy of the same is annexed as Annexure "J". The

reason for revoking the earlier order has been stated in para graph 2 thereof. It reads:-

"And whereas, certain documents were not supplied inadvertently within statutory time limit, it has been considered necessary to revoke the aforesaid order of detention; and-".

(3) Thereafter another order of detention has been passed u/s 3(1) of the Act. The grounds of detention also date 14th January, 1985, were served on the petitioner in jail. The representation made by the petitioner on 1st February, 1985, against his detention was rejected by the Government of India on 8th February, 1985. Thereafter, the Central Government by the order dated 8th April, 1985, in exercise of its power conferred u/s 8(f) read with section 9(2) of the Act confirmed the detention order dated 14th January, 1985, and further directed that u/s 10 of the Act the petitioner be detained for a period of two years from the date of his detention, i.e., from 14th January, 1985.

(4) Mr. Harjinder Singh, learned counsel for the petitioner, has urged two points. First that the petitioner has been prevented from making a proper representation against his detention as copies of the documents on which the detaining authority has relied upon were not supplied to him and secondly that the order dated 8th April, 1985, passed by the Central Government in exercise of its powers u/s 8(f) read with section 9(2) of the Act whereby the order of detention dated 14th January, 1985, was confirmed, apparently shows non-application of mind. Hence, the plea is that not only the continued detention of the detenu but also the detention order is bad in law and is liable to be quashed.

(5) The argument of Mr. Harjinder Singh about the nonempty of copies of the documents precisely is that the detaining authority has relied upon currency declarations made by the petitioner at Hongkong before the customs authorities of that country and also the passengers manufactures of the flights by which the detenu had travelled to Hongkong. He states that ground No. 27 of the grounds of detention shows that reliance has been placed on the said currency declarations. He submits that in spite of representation seeking copies of the said declarations and of the passengers manifestoes, the same were not supplied to the detenu.

(6) To appreciate this contention ground no. 27 may be reproduced. It reads :-

"27. In reply to letter No.366|XVI|9|84|dated 17th November 1984 of the Director Revenue Intelligence, Delhi, the commissioner of customs and excise, Hongkong furnished the details of currency declarations made by Shri Bahgur Rehman, Ravi Sharma, and Abdul Maricar before Hongkong Customs vide letter No. ICCR|N|COOP|3 dated 27-11-1984".

It may be mentioned that the copy of the letter, referred to in the said ground, from the Commissioner of Customs and Excise of Hongkong was admittedly supplied to the detenu along with the grounds of detention. It finds mention in

the list of enclosures. By the said letter the Director of Revenue Intelligence was informed that the declarations made by the petitioner herein on 2nd September, 1984, 9th September, 1984, and 23rd September, 1984, who had emplaned from Delhi on the first two occasion and from Bombay on the third occasion by flight No. 3 on all these trips, were to the effect that he was carrying U.S. \$ 200,000, U.S. \$ 400,000 and U.S. \$ 200,000, respectively on each visit. It is true that by the said representation dated 17th February, 1985, made on behalf of the petitioner by his Advocate, copies, inter alia, of the declarations and of the passengers manifestoes, were sought for but the detaining authority, if is apparent, was not in a position to supply copies of these documents as they were not in its power and possession. The information received regarding the declarations made by the detenu is contained in the letter dated 27th November 1984, received from the customs authorities at Hongkong. It is further obvious that the passengers manifestoes must be in the possession of the airlines by which the detenu travelled. There is no force in this argument. The plea that the petitioner was not afforded an opportunity to make an effective representation against his detention is thus to be rejected.

(7) The second plea regarding non-application of mind by the Central Government while confirming the detention order which is based on the letter of 8th April, 1985, copy of which has been annexed as an annexure (No. 3) with the rejoinder. It was urged that this letter was received by the detenu after filing of the writ petition and, Therefore, could not be attacked in the main petition. It seems that the petition was prepared by the counsel on 8th April, 1985, as he has signed it on that date. It was filed on 12th April, 1985, and was posted for 15th April, 1985, before the Admission Bench. We are satisfied that the petition was prepared prior to the receipt of the said letter by the detenu in jail. We, Therefore, permitted filing of the rejoinder during arguments. We also permitted the respondents' counsel to produce for our perusal the official second pertaining to the issuance of this letter by way of further return. The order of 8th April, 1985, reads as follow, :-

"ORDER

Whereas an order F. No. 673.00 85-Cus. Viii dated 14-1-1985, has been passed by the Additional Secretary to the Government of India u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, for the detention of Shri. Ravi Sharma ; whereas a declaration u/s 9(1) - ibid has been made against him by the Additional Secretary to the Government of India ;

And whereas the case of Shri Ravi Sharma was placed before the Advisory Board who are of the opinion that there is sufficient cause for his detention;

Now, in exercise of the powers conferred by Section 8(f) read with Section 9(2) of the aforesaid Act, the Central Government hereby confirms the aforesaid detention order and further directs that u/s 10 of the said Act, the said Shri Ravi

Sharma be detained for a period of two years from the date of his detention, i.e., from 14-1-1985".

(8) The argument is that the Additional Secretary to the Government of India was either not informed by the detaining authority that the detenu has been in detention since 17th November, 1984, in Tihar Jail or if informed the said specially empowered official did not apply his mind to the said fact as he has directed that the detenu be detained for a period of two years from 14th January, 1985. We may note here that Mr. M. Chandrasekhar, learned counsel for the respondents, agreed that in all those cases in which the first detention order had been revoked, and another order of detention was passed, the Government have conceded before the various courts that the period of detention is to be counted from the date the detenu was defamed under the first order of detention. He, Therefore, submitted that in the present case also keeping in view the consent made in other cases, he was not contending that the period of two years of detention would run from the date of the passing of the second detention order which had been passed on the same grounds of detention as the earlier order.

The law is well-settled that making of a subsequent order of detention in respect of the same acts for which an earlier order of detention was made would run counter to the entire scheme of The preventive detention laws, in *Chotka Hembram Vs. State of West Bengal and Others*, , their Lordships of the Supreme Court while deciding a case under the Maintenance of Internal Security Act held in paragraph 8 of the judgment as follows :-

"8.The matter can also be looked at from another angle. Section 13 of the Act provides that the maximum period for which any person may be detained in pursuance of any detention order, which has been confirmed u/s 12. shall be 12 months from the date of detention. It is, Therefore plain that the maximum period for which a person can be detained on account of specified acts should not exceed 12 months. If for the same acts repeated orders of detention can be made, the affect would be that for the same acts a detenu would be liable to be detained for a period of more than 12 months. The making of a subsequent order of detention in respect of the same acts, for which an earlier order of detention was made would run counter to the entire scheme of the Act. It would also set at naught the restriction which is imposed by section 13 of the Act relating to the maximum period for which a person can be detained in pursuance of a detention order".

(9) In this case counsel for the petitioner is not seeking the quashing of the impugned detention order on the ground that it has been passed on similar or same grounds of detention as the earlier order. He submitted so, in so many words. He was emphatic that he was challenging it as it had been passed mechanically and without application of mind. He has cited the above authority in support of that contention only. We, Therefore, are proceeding on the basis that a second detention order passed on the same acts or grounds on which the earlier order was passed is competent. We have only to see whether by the

second order the detaining and/or the confirming authority can direct detention of two years from the date of detention under the letter order.

(10) We cote that the record which has been produced by the respondents to meet this aspect of the case shows that a note dated 29th March, 1985, prepared by Shri A. K. Agnihotri, Under Secretary to the Government of India, recommending that the detention order in respect of the four detenus including the petitioner herein be confirmed, shows the date of detention of the present detenu as 14th January, 1985. In the said note there is no mention of the earlier order of detention or that the petitioner had been detained under that order with effect from 17th November, 1984. It was recommended that the Central Government may, Therefore, confirm the detention order passed against them and also direct that u/s 10 of the Act the determine of the three persons, namely, Shri Baligur Rehman, Shyam Krishan Sharma and Ravi Sharma, may continue or the period of two years and for Shri Sumer Chand for a period of one year from the dales of their detention, i.e., 14th January, 1985. The order dated 8th April, 1985, was admittedly passed on this recommendation of Shri Agnihotri, Mr. Chandrasekhar submitted that along with this note the whole file relating to the easier detention order had been put up to the confirming authority and Therefore ir be deemed that the confirming authority had gone through the record.

(11) Be that as it may, in the recommendation made to the confirming authority and in the order of confirmation it has been directed that the detenu be detained for a period of two years from the date of his detention, i.e., from 14th January, 1985. As held in Chorka Hembram's case (supra) the period for which a person can be detained on the basis of specified grounds cannot exceed the maximum period provided for detention. In the said case it was 12 months. In the present case it is two years. The confirming authority while confirming the second order of detention, which is made in respect of the same acts for which the earlier order of detention was made, cannot ignore two facts (1) that the detenu was under detention and (2) the period for which he has be in detained. The detenu thus cannot be made liable to be detained as in the present case for a period of more than two years from the date of his detention, i.e., 17th November, 1984. The principle enunciated in the above cited case regarding the maximum period of detention is squarely applicable to the facts of the present case. Therefore, the direction that the detenu be detained for a period of two years with effect from 14th January, 1985, is patently illegal.

(12) Mr. Chandrasekhar's submission that the order of confirmation dated 8th April, 1985, is capable of severanna, is misplaced. His plea that the order be read as if the date of detention is 17th November, 1984 and not 14th January, 1985, is untenable. The principle of severance cannot be applied to an order like the present order dated 8th April, 1985. This order is, Therefore, to be held to have been passed without application of mind. It is bad in law and is, Therefore, quashed. The result is that in law and order of detention has not been confirmed.

(13) The detention order as well as the declaration u/s 9(1) of the Act are also liable to be set aside. We accordingly quash the same. The rule is made absolute and the petition is allowed. We direct that the petitioner Shri Ravi Sharma, be set at liberty forthwith unless required to be detained under any other valid order passed by a Court or an authority.